IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8883 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HITESH DHANSUKHLAL VANKAWALA

Versus

COLLECTOR OF STAMPS

Appearance:

1. Special Civil Application No. 8883 of 1999

MR TS NANAVATI for Petitioner No. 1

Mr. MR Mengdey, AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 08/12/2004

ORAL JUDGEMENT

In this petition under Article 226/227 of the Constitution of India the petitioner who is one of the coowners of the property in question against whom the impugned order has been passed has challenged the

legality and validity of the order passed by the appellate authority dated 16th August 1999 in dismissing the appeal preferred by the petitioners and confirming the order passed by the respondent No.1 dated 15.1.1999 by which in exercise of powers under Section 32-A of the Bombay Stamp Act, 1958 ["the Act" for short] the respondent No.1 has passed an order directing the petitioners to pay an amount of Rs. 1,63,877 towards deficit stamp duty and further a sum of Rs. 250/= by way of penalty determining the market price of the property in question at Rs. 20,52,055.

2. The document in question came to be executed between the parties on 20th July 1998. The same was presented before the Sub-Registrar, Surat on the same date,i.e. 20th July 1998 and it was registered at No. 1114. Proceedings under Section 32A came to be initiated by the respondent No.1 and a notice under Rule 4 of the Bombay Stamp [Determination of Market Value of Property] Rules, 1984 {"the Rules" for short} came to be issued upon the petitioners determining the provisional market value of the property at Rs. 20,52,055 instead of the market price which was considered by the petitioner at Rs. 4,51,000. The petitioner was directed to file reply and hearing was fixed on 12.1.1999. The petitioners had submitted their reply and also the grounds on the basis of which the market value of the property is considered at Rs. 4,51,000. Inspite of the aforesaid detailed reply the respondent No.1 passed the impugned order on 15.1.1999 without even discussing the reply submitted by the petitioners and only considering the fact that Sub-Registrar, Mangrol has fixed the provisional market value considering the New Jantri with effect from 16.6.1998.

3. Being aggrieved and dissatisfied with the said order dated 15.1.1999 the petitioner preferred appeal before the State Government. Number of submissions were made inclusive of non-consideration by the respondent No.1 of the reply submitted by the petitioner. The respondent No.2 appellate authority by judgment and order dated 16th August 1999 dismissed the appeal confirming the order passed by the respondent No.1 dated 15.1.1999. Being aggrieved and dissatisfied with the order passed by the appellate authority in dismissing the appeal preferred by the petitioner and confirming the order passed by the respondent No.1 dated 15.1.1999 by which the petitioner is directed to pay an amount of Rs.1,63,877 towards deficit stamp duty and Rs. 250 by way of penalty the petitioners have preferred the present Special Civil Application under Article 226/227 of the

Constitution of India.

4. Shri Rahul Pandya, for Shri TS Nanavati, learned advocate appearing for the petitioners has submitted that while passing the impugned order dated 15.1.1999 the reply submitted by the petitioners is not considered at all and merely relying upon the New Jantri a copy of which has not been given to the petitioners the impugned order has been passed. He has further submitted that in fact there is no discussion relating to the reply submitted by the petitioners and therefore requested to allow the present Special Civil Application. He has also further submitted that in fact the appellate authority has also not considered the said aspect and the respondent No.1 has mechanically passed the order after considering the evidence on record.

5. Shri Mengdey, the learned AGP appears on behalf of the respondents. No affidavit-in-reply is filed on behalf of the respondents. He has submitted that considering the New Jantri which has come into effect with effect from 16.6.1998 the impugned order has been passed and the valuation was fixed by the Sub-Registrar, Mangrol at Rs. 22,52,055 which is the correct market value and therefore requested to dismiss the Special Civil Application.

6. Heard the learned advocates appearing for the parties. Notice under Rule 4 of the said Rules came to be issued by the respondent No.1 while exercising power under Section 32-A of the Act and a reply was submitted by the petitioners justifying the valuation considered by them at Rs. 4,51,000. When a detailed reply was filed it was incumbent on the part of the respondent No. 1 to consider the same and discuss the same. From the bare reading of the impugned order dated 15th January 1999 it is very clear that the respondent No.1 while passing the impugned order has not discussed and considered the reply submitted by the petitioners. There is nothing mentioned in the order by which it can be said that even the respondent No.1 has considered the reply. Under the circumstances, only on that ground and on the ground that the impugned order is a non-speaking order, the impugned order dated 15.1.1999 passed by the respondent No.1 and confirmed by respondent No.2 in appeal requires to be quashed and set aside and the same is hereby quashed and set aside. The matter is remanded to the respondent No.1 for deciding the same afresh in accordance with law and on merits by passing an order after considering the reply submitted by the petitioners. Rule is made absolute accordingly with no order as to costs.

[M.R. Shah, J.]

rmr.